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Respondent.

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) OSPI 113-86  
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) FINDINGS OF FACT  
) CONCLUSIONS OF LAW  
) AND ORDER  
)

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This matter has been deemed submitted following the filing of Appellant's Brief, Respondent's Brief and Appellant's Reply Brief from a decision rendered on August 19, 1986 by the Blaine County Superintendent of Schools following an appeal by the above named Appellant received on September 13, 1986.

The State Superintendent having reviewed the briefs and record in this matter, herein makes the following:

## FINDINGS OF FACT

1. Annette R. Fitzpatrick, Appellant herein, **was** a nontenured teacher in the Chinook, Montana, school system.

2. On April 15, 1986, Appellant was notified that her contract had not been renewed for the 1986-87 school year.

3. On April 17, 1986 Appellant requested reasons for the non-renewal pursuant to Section 20-4-206 MCA.

4. On April 22, 1986, the school board responded to the request as follows:

1 I am in receipt of your letter dated April 17,  
2 requesting the reasons for non-renewal of your contract.

3 After careful consideration of the Superintendent's  
4 recommendation that you not be rehired, the majority of the  
5 board of trustees voted to accept that recommendation.

6 P.L. 20-4-206 states the board of trustees shall  
7 furnish in writing the reasons for termination.

8 The trustees decided that you failed to meet minimum  
9 performance expectations by not developing and maintaining  
10 an appropriate classroom environment. Areas that need  
11 improvement include: teacher motivation, student motivation,  
12 time on task of student and teacher, and lack of variety of  
13 teaching methods.

14 5. Appellant filed a Notice of Appeal with the Blaine  
15 County Superintendent of Schools on May 15, 1986, contending that  
16 the reasons were not true.

17 6. The County Superintendent accepted jurisdiction on the  
18 matter, permitted both parties to brief the issues and on August  
19 19, 1986, issued Findings of Fact, Conclusions of Law and an  
20 Order. The County Superintendent did not hold an evidentiary  
21 hearing.

22 7. Subsequently Appellant filed this appeal with the State  
23 Superintendent of Public Instruction.

24 8. All the requirements as to initial notice of non-  
25 renewal (April 15, 1986), Appellant's request for reasons for  
non-renewal (April 17, 1986) and Respondent's response providing  
reasons for non-renewal (April 22, 1986) were complied with in a  
timely fashion.

9. Appellant concedes that the reasons provided for by the  
school board of trustees on their face state "what undesirable  
qualities merit a refusal to enter into a further contract."

10. The County Superintendent neglected to attach a copy of the Uniform Rules of Administrative Appellate Procedure for the State Superintendent of Public Instruction as provided in Section 10.6.119 ARM.

11. Appellant exercised a timely appeal to this State Superintendent and was aware of her appeal rights through her retained counsel.

From the foregoing Findings of Fact, the State Superintendent draws the following:

#### CONCLUSIONS OF LAW

1. The State Superintendent has jurisdiction in this matter pursuant to Section 20-3-107 MCA and Section 10-6-121, et seq., Administrative Rules of Montana.

2. A proper, limited hearing was held before the Blaine County Superintendent of Schools pursuant to Section 10.6.116 Administrative Rules of Montana and as further illustrated in Allen v. Trustees, Roosevelt County School District #3. OSPI 67-84, 5 St. Rptr. of Ed. Law 16, (1986).

3. The record has been transmitted to the State Superintendent pursuant to Section 10.6.118, Administrative Rules of Montana.

4. Appellant is a nontenured teacher.

5. This State Superintendent has applied the standard of review found in Section 10.6.125, ARM, in reviewing this matter. More specifically, this State Superintendent determined whether

1 the county superintendent erred as a matter of law in affirming  
2 the decision of the Respondent Chinook Board of Trustees in  
3 denying a hearing to determine the truth or validity of the  
4 reasons provided by Respondent.

5 6. The termination of a nontenured teacher is covered by  
6 Section 20-4-206, MCA.

7 7. The board of trustees of a school district has the  
8 ability to not renew a nontenured teacher and to provide reasons  
9 for that particular non-renewal.

10 8. Statutory procedures exist for the termination of  
11 nontenured teachers. Respondent School District complied with  
12 those procedures.

13 9. The nontenured teacher is entitled to a written reason  
14 that states "what undesirable qualities merited a refusal to  
15 enter into a further contract."

16 10. The language of the written reason supplied by the  
17 Respondent Board was sufficient in that it stated the undesirable  
18 qualities which merited the refusal to enter into a further  
19 contract. The purpose of the statement of reasons is simply to  
20 point out the teacher's inadequacies in order that she may  
21 correct them in the event of subsequent employment. The  
22 specification of details, such as time, place and circumstances,  
23 is unnecessary. Bridger Education Association v. Bridger School  
24 District, — Mont. —, 41 St. Rptr. 533 (1984).

25 11. The county superintendent of schools has limited  
jurisdiction to accept the case on non-renewal of a nontenured

1 teacher. Such jurisdiction is limited to contested cases  
2 alleging that the written reasons given to the teacher by the  
3 board of trustees does not meet the Bridger test. The county  
4 superintendent must decide upon receipt of a "Notice of Appeal"  
5 whether the reasons given tell the nontenured terminated teacher,  
6 in a general manner, what undesirable qualities merit a refusal  
7 to enter into a further contract.

8 12. The county superintendent does not have jurisdiction to  
9 determine just cause or whether the board of trustees can prove  
10 the reason or that the reason is true or that it is the only  
11 reason. Such is not provided for in Section 20-4-204 MCA or  
12 mandated by the Montana Supreme Court. See Allen v. Board of  
13 Trustees, OSPI 67-84, 4 St. Rptr. Ed. Law 10, (1985), 5 St. Rptr.  
14 Ed. Law 16, (1986); Shulte v. School District, OSPI 86-85, 5 St.  
15 Rptr. Ed. Law 13, (1986); Wanty v. School District, OSPI 87-85, 5  
16 St. Rptr. Ed. Law 10 (1986); Rude v. Board of Trustees, OSPI 66-  
17 84, 4 St. Rptr. Ed. Law 31 (1985); Conway v. Southwestern Montana  
18 Educational Cooperative, OSPI 73-84, 4 St. Rptr. Ed. Law 60  
19 (1985).

20 13. The county superintendent complied with the procedures  
21 as mandated by Bridger Education Association v. Bridger School  
22 District, supra.

23 14. Section 20-3-107, MCA requires the State Superintendent  
24 of Public Instruction to establish a uniform method of hearing  
25 and determining matters of controversy arising out of Title 20.  
The purpose of such a requirement is to ensure that there is

1 uniformity and consistency in the administrative determinations  
2 of the county superintendent of schools. The county  
3 superintendent of schools complied with the uniformity and  
4 consistency of prior decisions of this State Superintendent.

5 15. The failure of the county superintendent to include  
6 "the appeal information" as provided in Section 10.6.119 (1)(c)  
7 ARM is harmless error and does not require remand or reversing of  
8 the county superintendent's decision. The purpose of Section  
9 10.6.119(1)(c) is to ensure that the parties are informed of  
10 their appeal rights. The county superintendent correctly  
11 concluded that Appellant's correspondence indicated that she was  
12 fully aware of statutory provisions regarding appeals. Further,  
13 Appellant retained counsel who is very familiar with the appeals  
14 process.

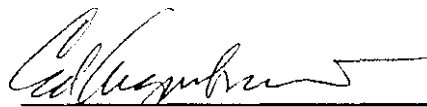
15 From the foregoing Findings of Fact and Conclusions of Law  
16 this State Superintendent now:

#### 17 ORDERS

18 1. That the Respondent School District Board of Trustees  
19 decision to not renew the contract of Appellant is hereby  
20 affirmed.

21 2. That the Blaine County Superintendent of Schools  
22 decision dated August 19, 1986 is hereby affirmed.

23 DATED this 5<sup>th</sup> day of September, 1987.

24   
25 Ed Argenbright  
State Superintendent

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 8<sup>th</sup> day of September, 1987  
a true and exact copy of the foregoing Findings of Fact,  
Conclusions of Law and Order was mailed, postage prepaid, to the  
following:

Emilie Loring  
121 4th Street North  
Suite 2G  
Great Falls, Montana 59401

Charles E. Erdmann  
Box 513  
Helena, Montana 59624

Elly Rennick  
County Superintendent  
Blaine County  
Chinook, Montana 59523

  
Diane Kielblock  
Office of Public Instruction